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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA

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8 UNITED STATES OF AMERICA,

Case No. 2:12-CR-463 JCM (VCF)

9 Plaintiff(s),

ORDER

10 v.

11 FREDERICK VERNON WILLIAMS, et al.,

12 Defendant(s).
13

14 Presently before the court is the matter of *USA v. Williams, et al.* Carolyn Shelmadine
15 Willis-Casey's ("petitioner") filed a notice of appeal on January 15, 2020. (ECF No. 983). The
16 Ninth Circuit construed petitioner's notice as a motion to reopen the time for appeal pursuant to
17 Federal Rule of Appellate Procedure 4(a)(6) and remanded the case to this court for consideration.

18 This court dismissed petitioner's § 2255 motion on October 25, 2019, and entered
19 judgment the same day. (ECF Nos. 972; 973). Ordinarily, petitioner was required to file her notice
20 of appeal within sixty (60) days after entry of this court's order and judgment. Fed. R. App. P.
21 4(a)(1)(B). However, Rule 4(a)(6) provides as follows:

22 The district court may reopen the time to file an appeal for a period
23 of 14 days after the date when its order to reopen is entered, but only
if all the following conditions are satisfied:

24 (A) the court finds that the moving party did not receive notice
25 under Federal Rule of Civil Procedure 77(d) of the entry of the
judgment or order sought to be appealed within 21 days after entry;

26 (B) the motion is filed within 180 days after the judgment or order
27 is entered or within 14 days after the moving party receives notice
28 under Federal Rule of Civil Procedure 77(d) of the entry, whichever
is earlier; and

1 (C) the court finds that no party would be prejudiced.

2 Fed. R. App. P. 4(a)(6).

3 In *United States v. Withers*, the Ninth Circuit noted that “Rule 4(a)(6) gives a district court
4 discretion in deciding whether to grant a motion to reopen. But that discretion is limited.” *United*
5 *States v. Withers*, 638 F.3d 1055, 1061 (9th Cir. 2011) (citations omitted). In particular, the court
6 held as follows:

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8 Where a moving party makes an unchallenged assertion that he
9 did not receive timely notice of judgment, and the other Rule
10 4(a)(6) conditions are not at issue, a district court errs in
11 denying the motion to reopen based solely on the party’s
12 failure to learn independently of the entry of judgment.

13 *Id.* at 1061–62.

14 Rule 4(a)(6)(B) is satisfied. Petitioner filed the instant motion on January 15, 2020, which
15 is within 180 days of this court’s October 25, 2019, order and judgment. Thus, the only issues
16 before the court are whether petitioner received notice of this court’s order within 21 days after
17 entry and whether the government would be prejudiced by reopening the time for appeal. *See* Fed.
18 R. App. P. 4(a)(A) and (C).

19 Petitioner avers that “she was not aware of the court’s denial of her § 2255 motion until
20 January 4, 2020, when her codefendant informed her that the court’s denial order was recently
21 published on LexisNexis.” (ECF No. 983). As a result, the court finds that petitioner did not
22 receive notice of this court’s order.

23 Next, the court must determine whether the government will be prejudiced by reopening
24 the time for appeal. The court declined to issue petitioner a certificate of appealability in full.
25 Consequently, petitioner “may request a circuit judge to issue it” pursuant to Fed. R. App. P.
26 22(b)(1). *See also* Ninth Circuit Rule 22-1. The government is not prejudiced by petitioner
27 availing herself of the legal recourse made available to her by statute.

28 Because petitioner did not receive notice of this court’s order, she filed the instant motion
within 180 days of that order, and the government will not be prejudiced by petitioner appealing

1 this court's order, the court finds that petitioner satisfies the requirements of Rule 4(a)(6). Thus,
2 the court grants petitioner's motion.

3 Accordingly,

4 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that petitioner's motion to
5 reopen time for appeal (ECF No. 983) be, and the same hereby is, GRANTED.

6 IT IS FURTHER ORDERED that the clerk shall serve a copy of this order on petitioner
7 by mailing a to 2416 Marvelous Manor, North Las Vegas, NV 89032.

8 IT IS FURTHER ORDERED that the clerk shall serve a copy of this order on the Ninth
9 Circuit Court of Appeals.

10 DATED January 31, 2020.

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UNITED STATES DISTRICT JUDGE